

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 4032 of 2004****For Approval and Signature:****HON'BLE MR.JUSTICE A.M.KAPADIA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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BAHADURSING VELLUBHA JADEJA - Petitioner(s)

Versus

KHANABHAI VASTABHAI HARIJAN & 1 - Respondent(s)

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Appearance :

MR DK ACHARYA for Petitioner No(s).: 1.

MR KIRTIDEV R DAVE for Respondent No(s).: 1.

Ms. Archana Rawal, AGP for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 03/08/2005

ORAL JUDGMENT

- 1.By filing instant petition under Article 222/227 of the Constitution of India, the petitioner seeks to challenge the order dated 24.2.2004 rendered in civil

Misc. Appeal No. 3 of 2004 by the learned Joint District Judge, Fast Track Court, Patan by which the appeal filed by respondent no.1 came to be allowed and thereby order dated 31.01.2004 recorded below application exh.5 in Regular Civil Suit No. 63 of 2003 by the learned Civil Judge (JD), Radhanpur granting ad interim relief in favour of the petitioner came to be set aside.

2. Having heard Mr. D.K.Acharya, learned advocate of the petitioner, Mr.K.R.Dave, learned advocate for respondent No.1 and Ms. Archana Rawal, learned AGP for respondent No.2 and on perusal of the averments made in the petition and the impugned order, according to this Court, no illegality or infirmity, much less jurisdictional error has been committed by the learned Joint District Judge, Fast Track Court, Patan requiring interference of this Court in exercise of powers conferred under Article 227 of the Constitution of India.
3. It may be noted that though the petitioner has filed this petition labeling under Article 226/227 of the Constitution of India this Court treats this petition as filed under Article 227 of the Constitution of India since it is filed against the interlocutory order.
4. In the case of Sadhana Lodh v/s National Insurance Company Ltd., (2003) 3 SCC 524, a Three Judge Bench of the Supreme Court has held that the petition would not lie under Article 226 of the Constitution of India but the petition would lie under Article 227 of the Constitution of India against the interlocutory order passed by the trial Court.
5. It is a settled principle of law that powers vested in

Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the Courts below and it cannot assume suo motu jurisdiction of appellate Court and correct every mistake assumed to have been committed by the Courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex Court in the case of (i) Mohd. Yunus v. Mohd. Mustaqim & others, AIR 1984 SC 38, (ii) Khanna Improvement Trust v. Land Acquisition Tribunal and others (1995) 2 SCC 557 and (iii) H.B.Gandhi v. M/s Gopinath, (1992) Supp. 2 SCC 312 (iv) State of Maharashtra v. Miland and others, (2000) 1 SCC 4.

6. In view of the aforesaid discussions and in view of the settled principles enunciated by the Supreme Court in above referred to judgements to the facts of the present case, this petition lacks merit and deserves to be rejected.

7. For the foregoing reasons, the petition fails and accordingly it is rejected with no order as to costs. Rule discharged. Interim relief granted earlier shall stand vacated.

8. It would be open for the petitioner to file appropriate application before the learned trial Judge for raising the preliminary issue as to whether the State of Gujarat is a necessary party or not. If such an application is filed, the learned trial Judge shall decide the same in accordance with law as early as

possible.

(A.M.Kapadia, J)

Jayanti*